



**The Commonwealth of Massachusetts**  
**DEPARTMENT OF**  
**TELECOMMUNICATIONS AND ENERGY**

D.T.E. 03-AD-01

April 4, 2005

Adjudicatory hearing in the matter of the complaint of John Lee protesting rates and charges for services provided by Boston Edison Company.

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ORDER ON MOTION FOR EXTENSION OF TIME TO APPEAL

APPEARANCES: Neil Osborne, Esq.  
Law Offices of Neil Osborne, P.C.  
204 Tremont Street  
Boston, MA 02116  
FOR: JOHN LEE  
Complainant

Jeffrey N. Stevens, Esq.  
800 Boylston Street  
Boston, MA 02199  
FOR: BOSTON EDISON COMPANY  
d/b/a NSTAR ELECTRIC  
Respondent

## I. INTRODUCTION

On January 12, 2005, the Department of Telecommunications and Energy (“Department”) issued an Order in D.T.E. 03-AD-01, finding that certain charges for services provided by Boston Edison Company d/b/a NSTAR Electric were appropriate and ordering John Lee (“Complainant”) to pay an amount of \$13,546.97 due on the account. The Department mailed the Order on January 12, 2005, to the Complainant’s attorney, Neil Osborne, Esq., at 204 Tremont Street, Boston, Massachusetts, 02116.<sup>1</sup> On February 17, 2005, the Department received a letter from the Complainant in which he stated that he did not receive written notice of the Department’s decision until February 11, 2005, well after the expiration of the twenty-day appeal period on February 1, 2005. The Complainant asserted that his attorney mailed him a copy of the Department’s Order but sent it to the wrong address. As proof, the Complainant provided a copy of the cover letter from his attorney, which did, in fact, list an address that did not match the Complainant’s home address. Through his letter, the Complainant requests an extension of the time to file an appeal.

## II. STANDARD OF REVIEW

General Law c. 25, § 5, provides in pertinent part that a petition for appeal of a Department order must be filed with the Department no later than 20 days after service of the order “or within such further time as the commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling.”

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<sup>1</sup> Throughout the proceeding, the Complainant was represented by counsel. Hence, the Department properly provided the Order to the Complainant’s attorney.

See also 220 C.M.R. § 1.11(11). The 20-day appeal period indicates a clear intention on the part of the legislature to ensure that the decision to appeal a final order of the Department be made expeditiously. Nunnally, D.P.U. 92-34-A (1993); see also Silvia v. Laurie, 594 F. 2d 892, 893 (1<sup>st</sup> Cir. 1978). The Department's procedural rule, 220 C.M.R. § 1.11(11), states that reasonable extensions shall be granted upon a showing of good cause. The Department has stated that good cause is a relative term and depends on the circumstances of an individual case. Boston Edison Company, D.P.U. 90-335-A at 4 (1992). Whether good cause has been shown "is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other party." Id. The filing of a motion for extension of the judicial appeal period automatically tolls the appeal period for the movant until the Department has ruled on the motion. Nandy, D.P.U. 94-AD-4-A at 6 n.6 (1994); Nunnally, D.P.U. 92-34-A at 6 n.6 (1993).

### III. ANALYSIS AND FINDINGS

In determining whether the Complainant's request for extension was timely filed, we note that Massachusetts law provides that "service shall be presumed to have occurred in the normal course of delivery of such mail." G.L. c. 25, § 5. In addition, the Department's regulations state that communications received by a party "shall be deemed to be filed or received on the date on which they are deposited in the United States mail, properly addressed and postage paid." 220 C.M.R. § 1.02(2)(b). The statutory presumption of service is rebuttable; for example, the Department has found that service did not occur where a petitioner

was out of the country. Ciccotelli v. Commonwealth Gas, D.P.U. 792 (1982). In this instance, the Complainant was represented by counsel, and no allegation has been made that the Complainant's counsel was not properly served.

The Department must be able to rely on service to counsel of record as being sufficient. To do otherwise, would create uncertainty as to whether any decision issued by the Department reached the affected party. As such, the Department finds that the Complainant has not shown good cause for granting his request for waiver of the appeal deadline.

IV. ORDER

After due notice and consideration, it is

ORDERED: That John Lee's Motion for Extension of Time to Appeal the January 12, 2005, decision of the Department is DENIED.

By Order of the Department,

\_\_\_\_\_/s/\_\_\_\_\_  
Paul G. Afonso, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
James Connelly, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
W. Robert Keating, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Judith F. Judson, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).